

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA . 4:22-CR-612
VERSUS . HOUSTON, TEXAS
EDWARD CONSTANTINESCU, . MARCH 14, 2023
ET AL, . 10:15 A.M.

TRANSCRIPT OF MOTION HEARING
BEFORE THE HONORABLE ANDREW S. HANEN
UNITED STATES DISTRICT JUDGE

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15 Proceedings recorded by mechanical stenography. Transcript
16 produced by computer-aided transcription.

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1**PROCEEDINGS**

2 THE COURT: Counsel, I'm concerned about making sure
3 this case gets on track, and that's really the reason -- I
4 mean, I could have ruled on some of these motions in chambers
5 and just -- without the benefit of a hearing, but I want to
6 make sure that this case is on track and that we go to trial
7 when it's set for trial.

8 And just for the record, we are here in
9 22-CR-612, United States of America versus Edward
10 Constantinescu, et al.

11 I guess I should call roll here.

12 Who is here for the government?

13 MR. ARMSTRONG: Good morning, Your Honor. Scott
14 Armstrong for the United States. Joined at counsel table by
15 John Liolos, Heyward Carter, Yifei Zheng and Agent Dillon.

16 THE COURT: For Mr. Constantinescu?

17 MR. FORD: It's Constantinescu. I'm Matthew Ford
18 here, along with my colleague, Cara Filippelli.

19 THE COURT: I was robbing him of a syllable. I'm
20 sorry.

21 MR. FORD: We will also accept Constantin.

22 THE COURT: I would have better luck with that.

23 Who is here for Mr. Matlock?

24 MR. REYES: Good morning, Your Honor. Luis Reyes for
25 Mr. Matlock, and I'm also here with Johnny Sutton and Bill

10 : 17 1 Stradley who just appeared in the case.

2 THE COURT: All right. For Mr. Rybarczyk?

3 MR. HILDER: Philip Hilder, and I'm joined with Tate
4 Williams and Eric Rosen.

10 : 17 5 THE COURT: All right. Do we have anyone here for
6 Mr. Deel?

7 (No response)

8 THE COURT: They don't really have a dog in any of
9 today's fights.

10 10 Hrvatin. Help me here. Mr. Mallett?

11 11 MR. MALLETT: Good morning, Your Honor. I'm Ed
12 Mallett for Mr. Hrvatin.

13 13 THE COURT: Hrvatin.

14 14 For Mr. Cooperman?

15 15 MR. LEWIS: Chip Lewis and Sina Zadeh here for
16 Mr. Cooperman.

17 17 THE COURT: All right. Mr. Hennessey?

18 18 MS. CORDOVA: Good morning, Your Honor. Laura Cordova
19 and Michael Murtha on behalf of Mr. Hennessey, who is here with
20 his mother and his girlfriend.

21 21 THE COURT: And Mr. Knight?

22 22 MR. AKERS: Cordt Akers on behalf of Daniel Knight.

23 23 THE COURT: Let me first get something out of the way.
24 I'm denying the motion to return passports that has been filed.
25 I'm not going to let anybody leave the country. That's a

10 : 18 1 blanket ruling. Covers everybody. I mean, if somebody can
2 come and show just an unbelievably important, outrageous
3 reason, I might consider it, but I'm not doing that. So I
4 think Judge Palermo set out the reasons, and I agree with them.

10 : 18 5 What I'm really concerned about, quite frankly,
6 is the motion Mr. Hilder filed about a bill of particulars.
7 And I'm not necessarily so worried about specifics at this
8 point in time, but what I really am worried about is that the
9 defendants get everything they need in time for that
10 information to be useful.

11 11 And so, Mr. Armstrong, why don't you -- I think
12 Mr. Hilder set out his complaints. Why don't you kind of
13 respond to that? And by way of doing that, I mean, I don't
14 need a legal response. I mean, we all know what the rules are
15 and the case law is on this.

16 16 But tell me how you see this unfolding and then,
17 Mr. Hilder, I'm going to let you respond to that and tell me
18 why that doesn't work.

19 19 MR. ARMSTRONG: Thank you, Judge. Good morning.

10 : 20 20 So we have taken great lengths to produce
21 discovery in this case in a timely and usable fashion. That
22 includes pushing out in early January the bulk, if not all, of
23 the defendants' social media activity. That includes their
24 tweets. That includes their chats on something called Discord,
25 which is basically just an online chat room. It also includes

10 : 20 1 their --

2 THE COURT: I had to look that up.

3 MR. ARMSTRONG: It also includes their trading
4 records. So if you match up the Discord chats and the tweets
5 and the trading records, it becomes pretty obvious that the
6 defendants are trading opposite to what they are saying to the
7 public and what they are saying to their followers. So those
8 two pieces of information are the pillars of our case.

9 Now, will there be more production forthcoming?

10 : 20 10 Absolutely. It happens in every case. But we made great
11 efforts to make sure that they had the critical mass in January
12 so we don't have a problem where we are asking to move the
13 trial come September or come August.

14 What we are going to do, as well, to the point
15 raised in Mr. Hilder's motion, is that this month we are also
16 going to voluntarily give the list of the tickers and the
17 general date ranges that goes into the figures cited in
18 paragraph 1 of the superseding indictment.

19 So with that information, the defendants should
20 have, again, a critical mass of information to mount an
21 effective defense.

22 THE COURT: Mr. Hilder, do you want to weigh in?

23 MR. HILDER: Sure, Judge. I'm going to let my
24 colleague, Tate Williams, respond.

10 : 21 25 THE COURT: Okay. Go ahead, Mr. Williams.

1 MR. WILLIAMS: Judge, we are on our second indictment
2 in two months. In the first one, they said it was
3 \$114 million. Although, if you add everything up in the
4 indictment, it only adds up to 14. So there's a delta, a gap
5 there of 100 million bucks that they have told grand juries
6 about over two months, but they haven't found time to tell us
7 yet. That's the fundamental problem.

15 But then, what you haven't heard is about the
16 discovery they have given to us. It's voluminous. I think
17 different defendants may have different opinions about how
18 useful it is, but the bottom line is, they are saying, Oh, it's
19 this social media. They have got it all. Go look. That's
20 like me asking which bricks in Minute Maid Park are rotten and
21 need to be replaced, and they will say, Go look at every brick
22 in the baseball stadium. That's not helpful.

23 And so we have voluminous amounts of social
24 media. We've got voluminous amount of trade data. They are
25 going to say, Here are the date ranges. Go look.

10 : 22 I suspect those date ranges are going to be an
1 entire calendar year, and we have got all their trade data, not
2 limited to whatever the basis of \$114 million are. So what
3 they are essentially saying is, We have given you all their
4 social media, we have given you all trade data, go fish.
10 : 23

6 That's not helpful, and we can't even evaluate the utility of
7 the discovery that's been provided without receiving a definite
8 list of the fraudulent stock transactions within a certain date
9 by a date certain. And then only after that, can we evaluate
10 the utility of discovery --

11 THE COURT: Let me stop you there, Mr. Williams. Help
12 me here. I just yesterday read the latest indictment, the
13 superseding indictment, and they list the stock and they list a
14 period. And so why can't the defendants match up their own
15 stock trades and their own tweets and their own emails during
16 that period concerning that stock?

17 I understand from Mr. Armstrong, if you don't
18 have them, he has already given them back to you.

19 MR. WILLIAMS: He hasn't, Judge, and what you are
20 seeing is the tip of the iceberg. You are focused on the
21 substantive counts of stock fraud. The conspiracy is much
22 larger.

23 And so if you take the stocks that are identified
24 in Counts Two through Twenty and you add them up, it ain't
25 \$114 million. It is more like fourteen to twenty.

10 : 24 1 When we get to trial, they are going to have
2 2 summary charts, and they're going to bring evidence of the
3 3 other \$100 million. They haven't. I have asked them for it.
4 4 They won't deny it. They say they are going to do it, but they
10 : 24 5 haven't yet. We need to know what the other \$100 million is,
6 6 and only when we get all of those stocks and we are told, This
7 7 is it, there is no more surprises, can we then see if we can go
8 8 back and get the social media activity.

9 9 This case is not confined to the substantive
10 10 count stocks. They have said that in writing to us. They have
11 11 said it in the indictment. It's a lot bigger than that.
12 12 That's a tease. That's the tip of the iceberg. It is what is
13 13 under the water that sank the Titanic, not what they can see on
14 14 top.

10 : 25 15 THE COURT: If I understand what you are saying -- and
16 16 I may just be repeating what you are saying, but let me make
17 17 sure I understand the main focus of your argument, which is,
18 18 Look, we can do what the Court has suggested for Counts Two
19 19 through X.

10 : 25 20 MR. WILLIAMS: Yes, Your Honor.

21 21 THE COURT: But for Count One, the conspiracy count,
22 22 one, we can't do that, although they give you a lot of facts
23 23 before they even get to Count One to back that up. But what
24 24 you can't do is somehow get from the 14 to the 114? And if
25 25 they are going to come in with a conspiracy claim that amounts

10 : 25 1 to \$114 million, we have no clue.

2 MR. WILLIAMS: That's precise. I will illustrate what
3 they can do and what they should do for everything else. For
4 the initial substantive counts in the initial indictment, when
5 they gave us the first round of discovery, they produced social
6 media in at least three different buckets. One of them was
7 we'll say a 1,500 page PDF of all of my client's twitter feeds
8 for the relevant time period. Another bucket was a bunch of
9 column-separated values in an Excel spreadsheet that we could
10 wallpaper this courtroom with. It's that big. And the third
11 bucket was a PDF of his tweets about the individual stock.
12 Yes. It's that big, Your Honor. If we printed it out, I
13 suspect it would cover the room.

14 For each individual identified stock and the
15 replies, we can put it up and say, Okay, they are saying with
16 respect to X stock, he said these things. So we can take the
17 trade data and we can take where they can segregate it off the
18 relevant social media and we can see that. So they did a
19 somewhat decent job of that with some of the first identified
20 stock. Some of that I believe they inherited from the SEC. We
21 will give credit elsewhere where it is due. We need that and
22 more for the whole 114 because it's not just the stock ticker.
23 Because they decided to charge this under this section of the
24 statute, they said, You made specific fraudulent
25 misrepresentations; therefore, we need to know what those are.

10 : 27 1 Just pointing me to the ether of that great big spreadsheet of
2 wallpaper saying "go find social media" isn't enough. If they
3 can do what they have already done for a handful of stocks and
4 segregate that off and tell us what is false, we think that
10 : 27 5 that would comport with the constitutional requirements, as
6 well. They have done it for a few. They can do it for all of
7 them, but just identifying all relevant stocks would be a great
8 starting point.

9 THE COURT: Let's start with, Mr. Armstrong, start
10 with the money. We seem to have a \$100 million gap here.

11 MR. ARMSTRONG: If I may, Your Honor, I don't think
12 there is actually a lot that's in dispute. We told defense
13 counsel that we would be providing the list of tickers and the
14 date range for those tickers that feed into the conspiracy
10 : 28 15 count by the end of the month, and we told them that maybe a
16 week or so ago.

17 THE COURT: And if we look at those stocks, are we
18 going to close that \$100 million gap?

19 MR. ARMSTRONG: Exactly. And so no one is trying to
20 hide the ball here. The reason why we are giving them that
21 list at the end of the month is to avoid the same concerns that
22 Mr. Williams just raised where we had a shifting landscape
23 where we are adding tickers here or we're changing the list.

24 The list that we provide at the end of the month,
10 : 28 25 as we maintained, is going to be the list that we will be

10 : 28 1 presenting at trial, and that is the list that feeds into the
2 \$114 million allegation in Count One. So I really think we are
3 talking past each other a little bit on that point, because we
4 are going to provide that information. And we said we are
10 : 29 5 going to do it voluntarily, and we are going to do it
6 eight months before trial.

7 THE COURT: Okay. Here's what I'm going to do. I'm
8 going to overrule your motion for right now, Mr. Williams, in
9 anticipation of this new production. But in doing this, I want
10 to make it clear -- and it's not just for Mr. Williams's client
11 but for all the defendants -- that I expect the government to
12 produce basically everything. I mean, there's no reason -- I
13 mean, they can read the superseding indictment, just like I
14 read it yesterday. I mean, they know what the allegations are
10 : 29 15 going to be, and they can't change the facts. Now, maybe they
16 have a different explanation than the government has. So
17 there's no downside for the government. There's no downside to
18 the defendants in everybody knowing everything. So I expect
19 that to be done.

20 Now, having said that, I mean, the government
21 doesn't have to do all the defense lawyers' work. I mean, you
22 know, that's what you guys are hired to do, but the defense
23 lawyers need the information. I mean, they are all capable.
24 They can figure out and they can piece together -- if they know
25 what the stock is and they know what the trades are, they can

10 : 30 1 figure out what their client said about X, Y, Z stock and what
2 they did or didn't do, but they have got to have that
3 information so -- and I'm stressing it now on the front end
4 because I don't want to have this conversation, as you said,
10 : 31 5 Mr. Armstrong, in August or September, because I want to get
6 this case tried and these defendants want to get on with their
7 lives. And let's move forward with it.

8 So, Mr. Williams, I'm not -- I am overruling your
9 motion with respect to compelling anything right now, but I
10 expect -- I want to follow this. And, Mr. Williams, once you
11 get it and if there's no explanations for the \$100-million gap,
12 then turn around and refile something and say, Judge, we have
13 got the information, we have looked at it now, it doesn't help.

14 MR. WILLIAMS: Judge, that's close to what I was going
15 to suggest; that you take the matter and hold it in abeyance
16 until after they meet their self-imposed deadline, which the
17 Court has, thankfully, adopted.

18 To the extent other people have a different
19 opinion about the sufficiency of their production, or we do,
20 that they can weigh in at that point in time.

21 MR. ARMSTRONG: Your Honor, it's very easy to see what
22 is coming around the corner on this issue. Because what we are
23 not going to do, and what the law does not require -- the Fifth
24 Circuit is pretty clear about it -- is we are not going to
25 provide all the evidentiary basis for each one of the

10 : 32 1 individual tickers that we are going to provide in March. I
2 think that that has no legal basis. So we're not going to say,
3 for example, on this ticker -- I'm just making up a name --
4 Ticker A, Here are all of the false statements for each one of
5 the seven defendants. That goes to the evidentiary proof as to
6 that ticker, and that is to your point, doing the defendants'
7 work for them. So we are not going to do that unless we are
8 ordered to.

10 : 32 9 THE COURT: I understand that. I'm not asking you to
10 subdivide everything, but I am asking you to produce -- I mean,
11 they have a right to know. I mean, 14 and 114 is a pretty big
12 gap, and you need to close that gap.

13 13 MR. ARMSTRONG: And we absolutely will, Your Honor.

10 : 33 14 Just to put meat on the bones, what we expect, as
15 well, is that we are going to have an expert in this case who
16 is going to provide the precise calculations in an expert
17 report, and we are amenable to a scheduling order that says the
18 date certain when that expert report has to be due. But as of
19 the information that we are going to be providing in March, it
20 is just going to be the tickers and the date range. And, of
21 course, with the allegations and with the underpinnings that
22 are alleged in the indictment, the defendants can then put the
23 pieces together.

10 : 33 24 THE COURT: And I'm going to want a scheduling order,
25 but I prefer y'all to, maybe even after this hearing, sit down

10 : 33 1 and talk about that, because they need that expert report.
2 You're going to need it for trial anyway. So, I mean, you are
3 going to be doing it whether I order it or not. They need it,
4 but they also need time to look at it and respond to it or get
5 a contrary expert.

10 : 33 6 So, you know, I would think, you know, as far as
7 experts go, May or June, sometime early enough where they have
8 a chance to respond. I will let y'all visit on that. And if
9 y'all come up with something that everybody agrees to, I will
10 adopt it. Otherwise, I will just impose one, but I think
11 that's important.

12 MR. ARMSTRONG: Thank you, Judge.

13 THE COURT: I mean, maybe it's because of where I grew
14 up as a judge, you know, trying cases in Brownsville. The U.S.
10 : 34 15 Attorney's Office down there basically said, Come look at my
16 file. And so I -- that worked out for everybody and, you know,
17 it didn't hurt the government and the defendant -- I never had
18 a Brady claim or anything that remotely resembled it.

19 So I want y'all to be forthcoming, but I'm
20 warning the defendants, I also don't expect you to do their
21 work for them.

22 MR. ARMSTRONG: Thank you, Judge.

23 MR. WILLIAMS: Thank you, Your Honor.

24 THE COURT: Now, we do have some motions to dismiss.

10 : 35 25 Ms. Cordova, I think yours is the first one

10 : 35 1 sitting here on my stack.

2 MS. CORDOVA: Yes, Your Honor.

3 THE COURT: This is on behalf of Mr. Hennessey?

4 MS. CORDOVA: Yes, Your Honor. We had moved to
10 : 35 5 dismiss Counts Eight, Nine and Eleven because they fail to
6 allege a false representation which goes to the core of
7 criminality under the securities fraud statute. Without a
8 false representation, there is no securities fraud. It's not
9 just one of these elements that courts have found does not go
10 to the core of criminality. The false pretense, the false
11 representation is the core of criminality of a 1348 violation.

12 And this is important, and I want to follow up on
13 the prior conversation about the bill of particulars. The
14 reason it's so important here is that in the counts where the
15 government has provided alleged false statements, we have
16 scrutinized the evidence and identified ways in which we
17 believe those statements are not, in fact, false. We would
18 present evidence at trial that those were not false statements.

19 If we are going through our clients' tweets,
10 : 36 20 Discord messages, looking for a false statement but find none
21 because we know the evidence apparently better than the
22 government and we are able to identify why this was a true
23 statement, this was a true statement, this was a true
24 statement, we don't have fair notice of what the allegations
25 are. And so we need to know what the false representations

1 are. Those go to the core of criminality, and it's not enough
2 for us to look at the tweets and look at the trades, because we
3 have done that, and we have not identified falsity. Therefore,
4 those counts -- and the government -- our view is that that's
5 not cured by a bill of particulars because the government
6 cannot stand -- the prosecutors cannot stand in the role of the
7 grand jury and identify the core of criminality with respect to
8 the statute. So that's why we have moved to dismiss those
9 three counts, Counts Eight, Nine and Eleven.

10 They are a different bit little, so I want to
11 talk about the difference. Counts Eight and Nine allege
12 absolutely no specific statements; just a month, a year, a
13 ticker and then a general -- really a group pleading statement
14 that defendants made false statements, without identifying
15 which defendants or which false statements with respect to
16 RGLS, which is Counts Eight and Nine.

17 Count Eleven is a little bit different because
18 the government has alleged in the superseding indictment
19 specific allegedly false statements. Those statements were
20 made by other defendants, allegedly, not by Mr. Hennessey.
21 Therefore, there is nowhere in the indictment that explains to
22 Mr. Hennessey how he committed securities fraud with respect to
23 Count Eleven. There's no false representation. There's no
24 trade. He is not even alleged to have traded ALZN, which is
25 Count Eleven. He has not alleged any specific profit, any

10 : 38 1 specific tweet or Discord message. Nothing. No statement by
2 him. No trading activity by Mr. Hennessey.

10 : 38 3 Again, they allege a time frame, and they allege
4 statements by other people, but they have not put Mr. Hennessey
5 on notice of why he is alleged to have violated Section 1348,
6 the securities fraud statute, with respect to that specific
7 stock. Therefore, we don't think it would be appropriate for a
8 bill of particulars or for discovery to fulfill the role of
9 what is essentially the grand jury's role, which is to identify
10 the core elements of criminality as to why Mr. Hennessey has
11 been charged in Counts Eight, Nine and Eleven, and, therefore,
12 we believe those should be dismissed.

13 THE COURT: All right. Who wants to answer for the
14 government?

10 : 38 15 Go ahead, Mr. Armstrong.

16 MR. ARMSTRONG: Thank you, Judge. It's a three-part
17 test, as the Court knows, for whether an indictment is
18 sufficient. Does it track the elements? Does it fairly inform
19 the defendant as to the charges? And does it protect against
20 double jeopardy?

21 In this case, there is really no dispute about
22 the second or third prong, so the only issue is, is there
23 protection -- I'm sorry -- is there sufficient facts and
24 allegations to fairly inform the defendant as to the charges?

10 : 39 25 And this is not your normal indictment. It

10 : 39 1 has 15 paragraphs of essentially general allegations; talking
2 exactly in paragraph 1 even, what exactly the scheme was, who
3 was in it and how it operated. And then there are 90
4 paragraphs that detail some specific examples of about 10
5 tickers.

10 : 39 6 It kind of defies, you know, a fair reading of
7 the indictment to then claim that there is not fair notice as
8 to the pump-and-dump scheme for this specific ticker, for this
9 specific range that are charged in Counts, what is it, Eight,
10 Nine and Eleven. And so a fair reading of the indictment
11 certainly fairly informs the defendant as to what the nature of
12 the offense is.

10 : 40 13 THE COURT: Does the indictment have to include the
14 false statements? I mean, you are alleging they made a false
15 statement.

10 : 40 16 MR. ARMSTRONG: That goes to the evidentiary proof
17 that we are going to present at trial, which is not what is
18 required. What is required, and what we have done, is allege
19 the facts that inform the defendant as to the nature of the
20 scheme, which is, as pointed out in paragraph 1, this is a
21 pump-and-dump scheme that involves three steps. They preloaded
22 the shares. They tweeted out false information, or
23 disseminated false information on Discord to induce others to
24 buy, which would raise the price. And then on the heels of
25 that, they sold their shares, not to themselves. That is laid

10 : 40 1 out in paragraph 1 of the indictment. To say that they don't
2 know the contours of the charged conduct defies a fair reading
3 of the indictment.

10 : 41 4 THE COURT: Okay. Mr. Hilder, your client, or
5 Mr. Williams also has a motion to dismiss, don't they?

6 6 MR. WILLIAMS: No, Your Honor. I believe that is
7 Mr. Constantinescu.

8 8 THE COURT: It is. I'm sorry.

9 9 Mr. Ford?

10 10 MR. FORD: Good morning, Your Honor.

11 11 We are moving to dismiss Count Twenty-one of the
12 indictment against Mr. Constantinescu. It alleges a count of
13 engaging in monetary transactions in property derived from
14 specified unlawful activity.

10 : 41 15 Eighteen USC, Section 1957 refers you to
16 Section 1956 for the definition of specified unlawful activity.
17 That list -- it provides an incredibly long list of specific
18 activities. Included in that is a reference to 1961, which
19 lists certain racketeering activity.

10 : 42 20 Under Subsection 1B of 1961, the legislature has
21 listed in an exclusive list over 90 different Title 18
22 offenses. In those 90 offenses, they have included four of the
23 six substantive offenses under Chapter 63. That includes mail
24 fraud, wire fraud, bank fraud and fraud in the provision of
25 foreign labor services. Interestingly, that last one was added

10 : 42 1 in 2013 after Section 1348 was adopted, at which time the
2 legislature could have chosen to include 1348. They
3 specifically included (sic) it from the list. I think from the
4 plain language --

10 : 42 5 THE COURT: They excluded it from the list?

6 MR. FORD: Specifically excluded it. I think it's
7 clear from the plain language of the statute, as well as the
8 structure and intent, that Section 1348 was not intended to be
9 covered under 1957 as specified unlawful activity.

10 : 43 10 Now, the government has bent over backwards to
11 try to take, I think, out of context a clause that appears much
12 later in the long text of 1961 where it includes fraud in the
13 sale of securities. That's the language we are dealing with
14 and arguing about today.

10 : 43 15 We think that language speaks for itself. The
16 securities fraud statutes are clear in different formulas that
17 they can use to encompass broad classes of activities. What
18 the legislature did with regard to -- I mentioned four of the
19 six in Chapter 63. Those Title 18 fraud offenses are included
20 in 1961.

21 One of the other ones that's omitted is certain
22 health care fraud. What the legislature has done in 1956 is
23 include incredibly broad language, any conduct that could be
24 considered a federal health care fraud offense. Right? They
25 know how to include a broad category.

10 : 44 1 If the legislature intended to include all
2 securities fraud, and specifically 1348, all they needed to do
3 is take that same health care provision and replace the word
4 "health" with "security," and it would have encompassed it.
10 : 44 5 Instead what they did is they used a narrow phrase, fraud in
6 the sale of securities.

7 6 If we look in other areas, we see the formulation
8 that we see in 1348, as well as in the securities laws and
9 regulations, which is the use of the phrase "in connection
10 with" or "in connection with the purchase or sale of
11 securities."

12 7 The Ninth Circuit in U.S. v Deeb already had a
13 chance to look at this. I think they described the
14 government's interpretation of 1348 as, you know, way outside
15 the bounds in a tortured reading.

16 8 The legislature knows if they wanted to use the
17 broad phrase "in connection with" or "in connection with the
18 purchase or sale of securities," they could have done so.

19 9 This is not an academic exercise. We think that
20 the legislature, because this is a money laundering offense
21 based on racketeering, was attempting to target specific types
22 of activities, mainly fraud in the actual sale or selling of
23 securities.

24 10 If you go through, it's fascinating. The cases
25 the government cited -- we went through all of them with a

10 : 45 1 fine-toothed comb. Not a single one uses 1348 as a predicate.

2 The one case that they were able to find was an
3 unpublished adopted report and recommendation of a judge in the
4 Southern District of Florida -- unpublished but adopted the
5 report and recommendation. It includes mail and wire fraud, so
6 the argument that I'm making here today was never raised.

7 If you look at the other cases, you will see the
8 same trend, which is, what they are talking about is
9 unregistered securities, offerings that were issued by
10 companies generally in the form of a private placement
11 memorandum through a fund.

12 THE COURT: So if I sell you a stock, and I lie to you
13 about it and unknowingly commit fraud, and you buy it, and you
14 are damaged, have I violated the statute?

15 MR. FORD: It's a fascinating question, and let me
16 answer. The courts have found yes, but the problem is those
17 facts are not even close to being alleged in this. There's no
18 allegation that my client, or really anybody in the room, but
19 specifically my client, engaged in a direct transaction with
20 anybody to sell a security. Every transaction was a bona fide
21 market transaction.

22 The allegation is that prior to that, they
23 allegedly increased the price of the stock through their
24 tweeting, but that is not a sale -- a fraud in the sale of the
25 securities. The sale itself was bona fide, and I don't think

10 : 47 1 anybody will disagree.

2 And so if you go back to these cases, what I'm
3 stressing is, where you have, for example, a fund, right, they
4 will accept a subscription agreement from the client. It is
10 : 47 5 that subscription agreement that represents the purchase and
6 sale in that situation. So if that subscription in the fund is
7 fraudulent, that's why the courts are saying this constitutes
8 fraud in the sale in the sense that the client that is
9 purchasing the interest or the security in the fund is actually
10 buying it directly from that individual who is then misusing
11 it. We simply do not have facts.

12 And there's an interesting piece to this, which
13 is in 1348. If you look at the language of it, it says
14 "artifice or scheme to defraud in connection with" --

10 : 47 15 THE COURT: Artificial?

16 MR. FORD: Artifice or scheme in connection with, and
17 then it limits it to registered securities. The cases they are
18 citing are dealing with unregistered securities. In other
19 words, private placements or offerings that are going directly
20 to investors who are directly purchasing from the individual
21 who is engaging in the fraud in the process of selling it.

22 There is one final piece to this, which is that
23 there is a securities fraud listed as a predicate to 1957. It
24 is fraud in the sale of counterfeit or forged securities. I
10 : 48 25 think what the legislature is doing is pretty clear. They are

10 : 48 1 trying to get to a slightly broader sort of concept of fraud in
2 the sale, which includes the cases, quite possibly, that we
3 have looked at, none of which include 1348. They are 10b-5
4 cases. But in every one, we are talking about Ponzi schemes.
10 : 48 5 We're talking about people who are running funds, who are
6 giving offerings that are valueless or worthless that have
7 nothing backing them. Each of those instances would clearly
8 constitute fraud in the sale of securities.

9 I just don't see the allegations here. From what
10 : 49 10 the indictment says, what the government is saying and
11 everything we see and understand, the sales they are talking
12 about were bona fide transactions in the marketplace, and I can
13 assure you that you will not see any direct transactions
14 between my client and any public person. It just didn't
10 : 49 15 happen.

16 THE COURT: Okay. Thank you.

17 Mr. Armstrong? Wow. Someone new.

18 MR. LIOLOS: Good morning, Judge. John Liolos on
19 behalf of the United States.

10 : 49 20 Your Honor, the defense -- we seem to agree on
21 one thing, and it's that the language, fraud in the sale of
22 securities, speaks for itself.

23 The defendant presents what he claims is a novel
24 statutory argument, but it is not really a close question. I
10 : 50 25 think it only seems to be novel because no one has challenged

1 such clear text before. The text at issue -- and I'm not going
2 to go through the whole statutory scheme because the Court has
3 it in our papers and the defense walked through it, but in
4 1961(1) (d) it says, Any offense involving fraud in the sale of
5 securities punishable under any law of the United States. Full
6 stop.

7 Defense asks this Court to limit that clear text
8 in two main ways by saying that it can't cover 1348 because
9 that's not in the long list of other crimes that does not
10 include a single securities fraud statute.

11 || And also, the defendants suggest --

16 THE COURT: All right. Go ahead.

17 MR. LIOLOS: And, secondly, the defendant seeks to
18 limit the language to issuers, even though the term "issuers"
19 appears nowhere in the relevant statutory scheme.

20 None of the other readings make sense, and when
21 you put them together, they make less sense. Again, the
22 language is any offense involving fraud in the sale of
23 securities punishable under any law of the United States.

24 If you add the defendants' readings, it changes
25 to any offense involving fraud in the sale of securities by an

10 : 51 1 issuer, and no one else, not punishable under any law of the
2 United States, but under no law of the United States, because
3 none is listed in the statute here.

4 THE COURT: Wouldn't it be simpler to state fraud in
10 : 51 5 the sale of securities by the defendant?

6 MR. LIOLOS: It certainly would. If you look at --

7 THE COURT: His argument is the defendant didn't sell
8 any securities here.

9 MR. LIOLOS: He did engage in open market securities
10 : 51 10 transactions.

11 THE COURT: But he didn't sell anything.

12 MR. LIOLOS: Well, he sold securities that he held in
13 his brokerage account on the open market.

14 THE COURT: But he didn't sell it to anyone.

15 MR. LIOLOS: Well, there has to be --

16 THE COURT: He bought some. I mean, he purchased some
17 and presumably there wasn't any -- at least as I read the
18 indictment, there is no fraud in the purchase.

19 MR. LIOLOS: Not under the terms of the statute here.
10 : 52 20 No. But factually, what he did was engage in open market
21 security sales. There has to be two sides to the transaction.
22 Someone has to buy the security from him, whether that's a
23 broker or someone else.

24 THE COURT: You just said "from him." No one bought
10 : 52 25 any securities from him.

10 : 52 1 MR. LIOLOS: The broker at least did, and there is a
2 victim on the other side of that that has to match up the
3 trade. Right?

10 : 52 4 So if the Court looks to the Fifth Circuit's
5 opinion in the Laird case, which we cited, I think, on page 16
6 of our papers --

7 THE COURT: Let's go back.

8 MR. LIOLOS: Certainly.

10 : 52 9 THE COURT: There's not a victim on the other side.
10 Is there? Tell me who it is. If I'm -- let's say we believe
11 everything you guys think you can prove. So, hypothetically, I
12 bought a share of stock, and I have sent out all kinds of
13 tweets and pumped up the price and then I have sold it -- let's
14 say I borrowed at 10 and I sold it at 20. Whoever I sold it to
15 at 20, they bought it at 20. They knew what the price was
16 going in.

17 Now, the other people, for instance, the people
18 that go to these websites or investment groups, they might have
19 been fooled because they relied on the defendant for giving
20 straightforward advice. Are they victims of the sale?

10 : 53 21 MR. LIOLOS: Well, the victims necessarily bought it
22 at 20, right, if they were induced by the defendants'
23 misrepresentations to purchase the stock, and there had to be
24 someone on the other side of this transaction. And this
25 happened --

1 THE COURT: They bought it at 20. They knew it was 20
2 going in. I mean, they bought it at the price --

3 MR. LIOLOS: Certainly, Your Honor.

4 THE COURT: The market price.

5 MR. LIOLOS: The representations that are alleged in
6 the indictment, for example, call out stock tickers that are
7 well above the prices at which they were sold, so a lot of the
8 victims here were likely induced to think that the stock would
9 go up to 10, for example, and were buying it at 2 in those
10 hopes.

11 THE COURT: The defendants' point is that -- let's
12 assume all of that is true. That fraud doesn't have anything
13 to do with the sale.

22 THE COURT: Aren't the real victims -- and part of
23 this exercise is to make sure I know everything about this case
24 or at least -- so part of this is educating me. It's one of
25 the reasons I wanted to have the hearing. But you have got an

1 alleged scheme where -- let's say the defendants bought at 10,
2 and they started telling all their investment groups and people
3 that follow them on the Internet, or whatever, that, man, this
4 stock is going through the roof. And it goes up to 15 and they
5 sell out. Okay. So they have cashed out of it, but they still
6 tout the stock. It's going to 20. It's going to 20. Aren't
7 the victims -- if -- the people who relied on those tweets to
8 make their decisions --

9 MR. LIOLOS: There are more victims. Certainly then
10 that could be matched up in a one-to-one transaction of the
11 defendants every time.

10 : 56 1 It's inherent in the nature of the pump-and-dump
2 2 scheme of a low float stock because they are purchasing up as
3 3 much as they can to control as much of the shares that are
4 4 available on the open market and, therefore, limiting the
5 5 supply of the stock available. And then they are amping up the
6 6 demand by promoting it.

10 : 57 7 And the defendants then constitute a significant
8 8 portion of the people that any of those people who want to buy
9 9 the stock can purchase it from. There has to be two sides to
10 10 the transaction. So it is necessarily fraud in the sale of
11 11 securities. It fits comfortably under the language of the
12 12 statute.

13 THE COURT: Okay.

14 MR. LIOLOS: Thank you, Judge.

10 : 57 15 THE COURT: I don't think I have any other motions to
16 16 dismiss, do I? I'm going to take the motions to dismiss under
17 17 advisement. I'm denying without prejudice Mr. Williams's
18 18 motion pending the government's disclosures.

10 : 58 19 I would like y'all, when I step off, to sit down
20 20 and see if you can come up with a schedule while you are all
21 21 here. And pretty much, if you come up with a schedule that you
22 22 all can live with, I will live with it. But what I want to
23 23 emphasize to everyone, it's a schedule that I want to be more
24 24 or less set in stone. I know there are some defendants that
25 25 don't -- or haven't indicated that they really care when they

10 : 58 1 go to trial, but there are other defendants that have said, I
2 want to go to trial now.

10 : 58 3 And, as I said earlier, they are restricted in
4 many ways, one of which, as I just said, I'm not letting them
5 go out of the country. So I want to end those restrictions,
6 assuming they are found not guilty, as soon as we possibly can.
7 And so I'm asking y'all while you are all here to -- let's get
8 a realistic schedule. I want to try this in October. That's
9 when I have told y'all I'm going to try it. There may not be a
10 specific week that I can give you right now, but I will give it
11 to you far in advance, when we will start, because I know we
12 have defendants from all over the United States, but we also,
13 I'm assuming, are going to have witnesses from all over. And
14 so I want to make sure I can give you a solid start date. But
10 : 59 15 I expect -- I want -- so when you get together, let's be
16 realistic. It's one of the reasons why the government started
17 talking about experts. I said, Yeah, but let's do it far
18 enough in advance that, you know, the defendants have plenty of
19 time to do what they need to do.

11 : 00 20 Right now we have final pretrial scheduled on the
21 6th of October and trial on the 23rd, and those are probably
22 still good dates. The 6th may change, because I may actually
23 be in trial in something else on the 6th, but I don't think I'm
24 going to be. So I would like to stay with final pretrial on
25 October 6th and trial on October 23rd.

11:00 1 Within that, I'm very flexible about whatever you
2 want to do, but let's be practical about it. Do a schedule
3 that you can live with that's commensurate with the facts of
4 the case and the amount of documents and the number of the
5 defendants and maybe -- I don't know the extent of the actual
6 communication between the defendants, but, I mean, I think I
7 got a flavor of it from reading the indictment. But this
8 doesn't seem like an overly complicated case, despite the
9 number of counts and despite the number of defendants.

11:01 10 I'm sure that -- and I know that the defendants
11 don't get a chance to give their side of the case in front of
12 the grand jury, so I'm sure there are other ways of viewing
13 some of these communications.

14 All right. So I'm going to step off, and I'm
15 going to adjourn the hearing. Sit down with the government --
16 I'm asking all the defense lawyers.

17 Hold on, Mr. Hilder, and then I will let you
18 speak. But let's get a schedule that everybody can live with.

19 Go ahead.

11:01 20 MR. HILDER: Yes, Judge. I would like the Court just
21 to address -- the government submitted to the Court the victim
22 post, essentially, and we submitted an alternative that I would
23 like the Court to consider --

24 THE COURT: I don't know that I have seen your
25 alternative.

11:02 1 MR. HILDER: It's Exhibit A to our response that we
2 sent in in our objection. I can provide a copy to the Court.

3 THE COURT: If you have a copy, let me look at it.

4 MR. HILDER: Yes, Judge.

11:02 5 THE COURT: I don't know if my prior order made it
6 clear, but I want these -- I know why the government feels like
7 they have to do this, but I want these to be neutral.

8 The one I saw that the government proposed had
9 the charges, but it didn't have the denial by the defendants of
11:02 10 that charge, and I thought that needed to be in there.

11 Mr. Armstrong, have you seen this?

12 MR. ARMSTRONG: Your Honor, off the top of my head --

13 THE COURT: You might have and just didn't remember
14 it. Take a look at it. It doesn't change a whole lot of
11:03 15 things.

16 MR. ARMSTRONG: Your Honor, I think one of the
17 principal points of contention that we have with the defense on
18 this is that they claim that the line that is directly above
19 presumption of innocence is editorializing, but, in our view,
20 it is, respectfully, not. It is just taken from paragraph 1 of
21 the indictment, and it gives just the smallest meat to the
22 bones of what the case is about, using language that is alleged
23 in paragraph 1 of the superseding indictment.

24 So, in our view, that is not editorializing. It
11:04 25 is just giving a public notice as to the most bare bones

11:04 1 allegation that support the charges. So I think that we can
2 probably live with the balance of the other changes, but we
3 believe that our submission is in compliance with the Court's
4 order at this point.

11:04 5 THE COURT: I may play with that, and then I will send
6 it out to y'all before I approve it.

7 MR. HILDER: Thank you, Judge.

8 One other point: I would like that the
9 government know the order to produce to us on a rolling basis
11:05 10 the responses they get. Obviously, we are going to need time
11 to follow up with these individuals if they are, in fact, true
12 victims, and for the government to hold on to that information,
13 I think, would not be in our best interest, the defense's best
14 interest, if we are going to keep the schedule that the Court
15 wants us to be on.

16 THE COURT: Help me here. What role do we think the
17 victims would play in the trial? Do we think any of them are
18 going to testify?

19 MR. ARMSTRONG: I certainly expect that, Your Honor.
11:05 20 I think that they would prove up materiality and they would
21 prove up how they relied on the false information the
22 defendants were putting into the market.

23 THE COURT: Then I think Mr. Hilder's suggestion is a
24 good one then.

11:06 25 MR. HILDER: Thank you, Judge.

11:06 1 THE COURT: If they were just going to, you know,
2 impact sentencing, but if they are going to actually testify, I
3 think the defendants need to know that. Let's rollingly
4 produce those. You don't have to produce them every day, but
5 every two weeks, or something, say, These are the victim impact
6 statements we have got.

7 MR. ARMSTRONG: No problem.

8 MS. CORDOVA: Your Honor, Mr. Hennessey has a pending
9 motion to modify the conditions of release to remove the GPS
11:06 10 monitor that was recently placed on him. If Your Honor can
11 take that up today --

12 THE COURT: I can take that up today. I'm denying it.
13 It's easy.

14 MR. ARMSTRONG: Your Honor, I don't know if Your Honor
15 will cover this today, but I think we also have the speedy
16 trial motion from Mr. Hennessey, as well. And we would
17 respectfully request that if Your Honor is going to deny that,
18 that Your Honor does so in a way that conforms with the
19 requested order that we laid out in our motion.

11:06 20 THE COURT: In your response?

21 MR. ARMSTRONG: In our response. I'm sorry.

22 THE COURT: Okay. Mr. Mallett, is your client here?

23 MR. MALLETT: He is, Your Honor.

24 THE COURT: Why don't y'all come up?

25 MR. MALLETT: May I approach, Your Honor?

11:07 1 I am informed the marshals have escorted him
2 upstairs or downstairs.

11:08 3 THE COURT: We will get him back. Y'all don't leave.
4 I will step off, let y'all visit about a scheduling order and
5 in the meantime, we will have him brought.

6 All right. Thank you, Counsel.

7 *(Court recessed at 11:08 AM)*

8 *(Court resumed at 11:47 AM)*

11:47 9 THE COURT: I have played with the post and Rhonda has
10 a copy for you. It includes some of the suggestions of
11 Mr. Hilder but not all of them. I will give y'all a chance to
12 read it.

13 Mr. Armstrong, does that get you where you need
14 to be?

11:48 15 MR. ARMSTRONG: Your Honor, thank you for putting this
16 together. The only question I have is -- this does not appear
17 to have page 2, which we submitted as Exhibit 1.

18 THE COURT: I don't think I have seen a page 2.

19 MR. ARMSTRONG: It just has more information about the
20 Crime Victims Right Act and the right to retain counsel and
21 then it has a little blurb about plea agreements and --

22 THE COURT: Will you hand it to me?

23 MR. ARMSTRONG: May I approach?

24 It's a statement about something that our folks
25 put together.

11:49 1 THE COURT: Mr. Hilder, do you want to look at this?
2 It looks like that's just a form, and I'm all right with that.

3 MR. HILDER: I don't have any objection to that,
4 Judge. As for the Court's suggestions, we are fine with that.

11:49 5 MR. ARMSTRONG: No objection, Your Honor.

6 THE COURT: All right. So you are free to do that.

7 MR. ARMSTRONG: Thank you, Judge.

8 THE COURT: All right. Secondly, while I have
9 everybody here, Mr. Ford, is it your client the government is
11:50 10 seeking to nab the cars?

11 MR. FORD: Yes, Your Honor. If I may for a moment. I
12 just received, as I was walking out the door here, a document
13 entitled "warrant to seize property subject to forfeiture."

14 It is my understanding at this time there's no
15 property that's subject to forfeiture. We have not had an
16 opportunity in the past two or three minutes to do any
17 substantive investigation of the law, but my understanding is
18 the Supreme Court last left off on this in 2016 in a case
19 called Luis v the United States, 136 S Ct 1083, plurality of
20 opinion written by Justice Breyer with very substantial and
21 compelling concurrence written by Justice Thomas.

22 That case is crystal clear that under the Sixth
23 Amendment, the government may not seize untainted assets prior
24 to conviction as it would be a violation of the defendant's
25 Sixth Amendment right and his right to use his assets for the

11:51 1 purpose of his legal defense.

2 I will -- from a factual perspective, the cars
3 that are listed -- it looks like two of the three were
4 purchased prior to any time that my client allegedly made money
11:51 5 through the scheme that the government is alleging. I don't
6 think they can show any connection, so I'm not sure how they
7 were able to obtain this warrant. There is a vehicle that was
8 purchased in 2022. That is a Rolls-Royce Dawn vehicle.

9 Again, I do not believe that that would be tied
11:52 10 to any of the allegations or funds in the indictment, but, as I
11 said, regardless, I do believe under United States v Luis,
12 Justice Breyer's plurality opinion and Justice Thomas's very
13 compelling concurrence, which I think has been leading the way
14 in this area of law, that this forfeiture is improper and
15 unconstitutional. And to add a gloss to it, there is at least
16 one defendant I understand in this case who did, in fact, sell
17 his vehicle for the purpose of obtaining and retaining counsel
18 in this matter.

19 So thank you, Your Honor.

11:52 20 THE COURT: Okay. Mr. Armstrong, do you want to weigh
21 in?

22 MR. ARMSTRONG: Mr. Carter for the government.

23 THE COURT: Mr. Carter?

24 MR. CARTER: Your Honor signed warrants. The warrants
11:52 25 were submitted by affidavit to a magistrate court judge last

11:52 1 week. They were signed by a magistrate court judge, as is
2 standard in this district. It's very common in these
3 particular cases. There is nothing special about it. These
4 are warrants that are specifically for cars that were purchased
5 with funds that were illegally or fraudulently obtained through
6 the scheme and course and conduct of this case.

7 THE COURT: I'm going to stay these warrants.

8 MR. CARTER: Would you like to review the affidavits
9 as they stand, Your Honor?

11:53 10 THE COURT: No. I'm staying the warrants, but I'm
11 ordering the defendant not to dispose of those cars.

12 MR. CARTER: Fair enough. Thank you, Your Honor.

13 THE COURT: Without a further court order.

14 MR. FORD: For the record, as part of my client's
15 current bail conditions, he is not permitted to transfer any
16 assets in excess of \$5,000, so I can assure you that that will
17 not happen.

18 We appreciate your ruling and are available for
19 any additional briefing.

20 Thank you again, Your Honor.

21 THE COURT: All right. When we are talking about
22 scheduling, I made a misstatement. I said the pretrial was on
23 October 6th. I think it's the 16th, with trial to be on
24 the 23rd, so let me correct that.

25 Were y'all able to get together and talk about a

11 : 54 1 schedule?

2 MR. ARMSTRONG: Yes, Your Honor. Thank you for the
3 probing.

4 I think that we agreed to produce our expert
11 : 54 5 reports -- and full disclosure -- we don't truly believe that
6 these are expert reports, but we are happy to disclose the
7 information on June 5th.

8 THE COURT: June 5th?

9 MR. ARMSTRONG: Yes, Your Honor.

10 11 : 54 THE COURT: Is there a reciprocal discovery matter in
this?

12 MR. ARMSTRONG: We didn't confer about that, in total
13 candor, but we would, of course, love one.

14 THE COURT: I guess I will cross that bridge when I
11 : 54 15 get to it, but we'll leave it right now that the government is
16 going to disclose by June 5th, and the report should -- I know
17 we're in -- we're not in civil cases where reports have all
18 these requirements, but it should be a full report. I mean, it
19 should be something that really sets out, here's what we think
20 or, here's what I, the expert, am going to testify was done
21 incorrectly or illegally.

22 MR. ARMSTRONG: So the expert -- that is why I was
23 couching it as not quite expert testimony. The expert is not
24 going to proffer an opinion like that. The proposed experts,
25 11 : 55 using air quotes, that we have right now are twofold. One is

11:55 1 going to be calculating the profit and loss for the tickers,
2 which is basically just running the math.

3 THE COURT: He is going to close Mr. Williams's
4 \$100 million gap?

11:55 5 MR. ARMSTRONG: He is going to close the gap. He is
6 not going to be offering -- or she -- I don't even know who it
7 is yet -- is not going to be offering an opinion such as, these
8 are fraud proceeds, or anything like that.

9 The other expert is going to be someone from
11:56 10 FINRA who's going to be talking about just the trading volume
11 on specific days and talk about how the volume went up,
12 corresponding when the tweet activity occurred and will talk
13 about what happened to the price. So that's going to be kind
14 of the contours of the not quite expert testimony but what we
15 are calling --

16 THE COURT: I think they are experts if they are going
17 to be experts in the market as opposed to liability experts.

18 MR. ARMSTRONG: Understood.

19 THE COURT: Let's give the defendants a fair report.

11:56 20 MR. ARMSTRONG: We absolutely will, Your Honor.

21 THE COURT: By that, I mean full. Not a C report.
22 Give them an A report.

23 All right. Thank you, Mr. Armstrong.

24 MR. ARMSTRONG: Thank you, Judge.

11:56 25 THE COURT: Is there anything else we can take up as a

11:56
1 whole while we are here?

2 I do have a matter to take up with Mr. Hrvatin.

3 But if not, y'all are excused.

4 MR. HILDER: Thank you, Judge.

5 *(Court adjourned at 11:56 a.m.)*

6 * * * *

7
8 I certify that the foregoing is a correct transcript from
9 the record of proceedings in the above-entitled cause.

10
11 Date: March 18, 2023

12 *1st Mayra Malone*

13 -----
14 Mayra Malone, CSR, RMR, CRR
Official Court Reporter

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MR. AKERS: [1] 6/22	16 [1] 30/5 16th [1] 42/23	9/17 12/11 15/1 15/19 15/24 17/1 18/13 19/11 20/21 21/4 23/14 25/8 25/13 27/4 27/5 27/12 31/23 32/12 34/17 35/1 35/2 36/22 39/4 39/19 39/21 39/24 42/3 42/21 42/25 43/12 44/10 44/11 44/13
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